

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BIG CITY, SMALL WORLD  
BAKERY CAFÉ, LLC, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

Civil Action No. 16-12652  
Honorable Gerald E. Rosen  
Magistrate Judge David R. Grand

FRANCIS DAVID CORPORATION  
d/b/a ELECTRONIC MERCHANT  
SYSTEMS,

Defendant.

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**REPORT AND RECOMMENDATION TO DENY AS MOOT DEFENDANT'S MOTION  
TO DISMISS OR STAY PROCEEDINGS PENDING ARBITRATION [9]**

This putative class action concerns the commercial arrangement and business dealings between Plaintiff Big City, Small World Bakery Café, LLC (and all others similarly situated) (“Plaintiff”) and Defendant Francis David Corporation d/b/a Electronic Merchant Systems (“EMS”). Plaintiff filed its complaint on July 15, 2016, and on August 30, 2016, EMS timely (pursuant to stipulation) filed a motion to dismiss or stay proceedings pending arbitration of Plaintiff’s individual claims (the “arbitration motion”). (Docs. #6, #9). Pursuant to 28 U.S.C. §636(b)(1)(B), the arbitration motion was referred to the undersigned for a report and recommendation. (Doc. #17).

In a recently-filed stipulated order, the parties agree that the arbitration motion is moot. (Doc. #25 at ¶ 3). Accordingly, **IT IS RECOMMENDED** that Defendant’s arbitration motion (Doc. #9) be **DENIED AS MOOT**.

Dated: November 22, 2016

s/David R. Grand

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Ann Arbor, Michigan

DAVID R. GRAND  
United States Magistrate Judge

**NOTICE TO THE PARTIES REGARDING OBJECTIONS**

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. §636(b)(1) and Fed. R. Civ. P. 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of HHS*, 932 F.2d 505, 508 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981). The filing of objections which raise some issues, but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *See Willis v. Sec'y of HHS*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. L.R. 72.1(d)(2), a copy of any objections is to be served upon this magistrate judge.

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on November 22, 2016.

s/Eddrey O. Butts  
EDDREY O. BUTTS  
Case Manager